

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA) DOCKET NO.: 1:13CR0020-MR-DLH
)
 v.) **PLEA AGREEMENT**
)
 WILLIAM LEDESSIE SMITH, III)
)

NOW COMES the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina, and the defendant, WILLIAM LEE SMITH, III, in person and through counsel, Sean Devereux, and respectfully inform the Court that they have reached an agreement pursuant to Federal Rule of Criminal Procedure ("Rule") 11. References to the United States herein shall mean the United States Attorney for the Western District of North Carolina.

I. Plea

1. The defendant agrees to enter a voluntary plea of guilty to Count One as set forth in the Bill of Information, and admits to being in fact guilty as charged in that count.

2. If the Court finds the defendant's plea to be voluntary and knowingly made, and accepts the plea, then the United States will agree not to prosecute the defendant for any other offenses involving the theft, embezzlement, or misappropriation of property from the Asheville Police Department evidence room.

3. The defendant understands that each and every provision set forth below is a material term of the plea agreement. The defendant's failure to fully comply with any provision of the plea agreement or attempt to withdraw the guilty plea (i) will relieve the United States of its obligations under the Plea Agreement, but the defendant will not be relieved of the defendant's obligations or allowed to withdraw the guilty plea; (ii) may constitute the defendant's failure to accept responsibility under U.S.S.G. § 3E1.1; and (iii) will permit the United States to proceed on any dismissed, pending, superseding or additional charges.

II. Sentence

4. The defendant is aware that the statutory maximum sentence for this count is as follows:

Count One: a violation of 18 United States Code § 666(a)(1)(A): a maximum term of ten years of imprisonment, a \$250,000 fine, or both, and no more than three years

of supervised release.

5. The defendant understands that a violation of supervised release may subject the defendant to an additional period of incarceration.

6. The defendant is aware that the Court: (a) will consider the advisory *United States Sentencing Guidelines [U.S.S.G.]* in determining the sentence; (b) has not yet determined the sentence and any estimate of the likely sentence is a prediction rather than a promise; (c) has the final discretion to impose any sentence up to the statutory maximum for each count; and (d) is not bound by recommendations or agreements by the United States. Knowing this, the defendant understands that the defendant may not withdraw the plea as a result of the sentence imposed.

7. Pursuant to Rule 11(c)(1)(B), the parties agree that they will jointly recommend that the Court make the following findings and conclusions as to the U.S.S.G.:

a. The parties agree that the initially-applicable Sentencing Guideline is U.S.S.G. §2B1.1, and that for purposes of U.S.S.G. §2B1.1(a)(2), the amount of loss that was known to or reasonably foreseeable by the defendant was more than \$10,000 and less than \$30,000. The parties agree, however, that the cross-reference of U.S.S.G. §2B1.1(c)(1)(A) is applicable, in that a controlled substance was taken, and therefore that the offense level is to be calculated pursuant to U.S.S.G. §2D1.1.

b. The defendant should receive a two-level enhancement pursuant to U.S.S.G. § 3B1.3 (Abuse of Position of Trust).

c. The Government agrees that the defendant's entry of plea is timely for purposes of U.S.S.G. § 3E1.1(b).

d. Unless otherwise set forth herein, the parties agree that they will make the above recommendations as to the adjusted offense level, and will recommend no other enhancements or reductions to the Court.

e. The parties agree that either party may seek a departure or variance from the "applicable guideline range" (U.S.S.G. § 5C1.1).

f. The United States will inform the Court and the probation office of all facts pertinent to the sentencing process and will present any evidence requested by the Court.

8. The defendant agrees to the following with respect to financial disclosures, monetary penalties, forfeiture and restitution:

a. To pay full restitution, regardless of the resulting loss amount, to all victims directly or indirectly harmed by the defendant's "relevant conduct," including conduct pertaining to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3.

regardless of whether such conduct constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that such restitution will be included in the Court's Order of Judgment and an unanticipated amount of a restitution order will not serve as grounds to withdraw the defendant's guilty plea.

b. To make full disclosure of all current and projected assets to the U.S. Probation Office immediately and prior to the termination of the defendant's supervised release or probation, such disclosures to be shared with the U.S. Attorney's Office, including the Financial Litigation Unit, for any purpose.

c. To truthfully complete under penalty of perjury within thirty days of the execution of this Plea Agreement a financial statement provided by the U.S. Attorney's Office and to update the statement with material changes within seven days of the change.

d. That monetary penalties imposed by the Court will be (i) subject to immediate enforcement as provided for in 18 U.S.C. § 3613, and (ii) submitted to the Treasury Offset Program so that any federal payment or transfer of returned property the defendant receives may be offset and applied to federal debts but will not affect the periodic payment schedule.

9. The defendant agrees to participate in the Inmate Financial Responsibility Program to fulfill all financial obligations due and owing under this agreement and the law.

III. Procedure

10. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Rule 11.

11. The factual basis, as required by Fed. R. Crim. P. 11(b)(3), will be deferred until the time of sentencing. The defendant stipulates that there is a factual basis for the plea of guilty and that the Court may use the offense conduct set out in the Presentence Report, except any facts to which the defendant has objected, to establish a factual basis for the defendant's plea. If requested by the United States, the defendant shall sign a Factual Resume, which will be filed separately.

IV. Waivers

12. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty, has discussed these rights with defense counsel and knowingly and expressly waives any right to withdraw the plea once the Magistrate Judge has accepted it.

13. The defendant acknowledges that Rule 11(f) and Fed. R. of Evid. 408 and 410 are rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions. The defendant knowingly and voluntarily waives these rights and agrees that any statements made in the course of the defendant's guilty plea or this plea agreement (in part or in its entirety, at the sole discretion of the United States) will be admissible against the defendant for any purpose in any criminal or civil proceeding if the defendant fails to enter or attempts to withdraw the defendant's guilty plea, or in any post-conviction proceeding challenges the voluntary nature of the guilty plea.

14. The defendant agrees that by pleading guilty, the defendant is expressly waiving the right: (a) to be tried by a jury; (b) to be assisted by an attorney at trial; (c) to confront and cross-examine witnesses; and (d) not to be compelled to incriminate him or herself.

15. The defendant has discussed with his attorney: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and or sentence through an appeal or post-conviction after entering into a plea agreement; (2) whether there are potential issues relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability of entering into this plea agreement.

16. The defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction except for: (1) claims of ineffective assistance of counsel or (2) prosecutorial misconduct. The defendant also knowingly and expressly waives all rights conferred by 18 U.S.C. § 3742 or otherwise to appeal whatever sentence is imposed with the two exceptions set forth above. The defendant agrees that the United States preserves all its rights and duties as set forth in 18 U.S.C. § 3742(b).

17. The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

V. Assistance to United States

18. If requested by the United States, but only if so requested, the defendant agrees to cooperate with the United States, including but not limited to the following:

a. The defendant will provide truthful information about the subject charges

and about any other criminal activity within the defendant's knowledge to any United States agent or agency that the United States designates.

b. The defendant will testify truthfully in any trial, hearing, or grand jury proceeding, including, but not limited to, testimony against any co-defendants, as the United States designates. Should the defendant testify at the request of the United States, the defendant hereby waives payment of any witness fees or expenses.

c. The defendant will be reasonably available for debriefing and pre-trial conferences as the United States may require.

d. The defendant will provide to the United States all documents or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

e. The defendant understands that the United States desires only truthful and accurate information and testimony and, in fact, that knowingly giving false information or testimony can be prosecuted as an additional criminal offense.

f. The defendant will not violate any federal, state, or local law, or any order of any court, including any conditions of pretrial, pre-sentence, or post-sentence release.

g. The defendant's obligation under this section is a continuing one, and will continue after sentencing until all investigations and/or prosecutions to which the defendant's cooperation may be relevant have been completed.

19. The United States agrees that nothing that the defendant discloses pursuant to the Plea Agreement will be used against the defendant in any other criminal proceeding, except:

a. information regarding crimes of violence;

b. in a prosecution for any crime committed by the defendant after the effective date of this plea agreement;

c. as necessary in a prosecution for false statements, perjury, obstruction of justice, or in any proceeding for impeachment, rebuttal, or countering a defense (whether presented through opening statements, cross-examination, or otherwise);

d. by making indirect use of any information that the defendant provides, including investigative leads or other witnesses. However, if there is an agreement pursuant to U.S.S.G. §1B1.8, information directly or indirectly derived from the defendant pursuant to this agreement shall not be used in determining the applicable guideline range.

20. Nothing in this agreement places any obligation on the United States to seek the

defendant's cooperation or assistance. If the defendant so assists the United States:

a. The United States, in its sole discretion, will determine whether said assistance has been substantial.

b. Upon a determination that the defendant has rendered substantial assistance, the United States may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines or pursuant to Rule 35(b) for a reduction in the defendant's term of imprisonment. The United States may also, within its sole discretion, move the Court pursuant to 18 U.S.C. § 3553(e) and/or Rule 35(b) to impose a sentence below any applicable statutory mandatory minimum.

c. Any determination that the defendant has failed to provide substantial assistance or has knowingly provided false information is within the sole discretion of the United States, and the defendant waives all objections and rights of appeal or collateral attack of such a determination. The defendant understands that if the United States makes a motion for reduction of sentence, the motion is not binding on the District Court.

VII. Conclusion

21. This agreement is effective and binding once signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled by the Court.

22. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement, or as noticed to the Court during the plea colloquy and contained in writing in a separate document signed by all parties.

SO AGREED.



RICHARD LEE EDWARDS, Assistant United States Attorney

DATED: 3/23/13



SEAN DEVEREUX, Attorney for Defendant

DATED: 3/26/13



WILLIAM LEE SMITH, III, Defendant

DATED 3-26-13